



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR TAX EXEMPT BOND EXAMINERS AND GROUP MANAGERS

FROM: Rebecca L. Harrigal
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SUBJECT: Interim Guidance: Changes to Conflict of Interest Procedures

This memorandum provides interim guidance to tax-exempt bond examiners and managers on modified procedures for addressing conflicts of interest in tax-exempt and tax-credit bond examinations. These procedures reflect guidance from the Office of Professional Responsibility on identifying and addressing conflicts of interest during an examination. Based on that advice, effective immediately, the guidance in IRM 4.81.5.6.4.1 is superseded by the provisions of proposed IRM 4.82.3.4.2.2 attached to this memorandum.

IRM 4.81.5.6.4.1 provides that examiners should review all Forms 2848 received during the examination and determine whether a conflict of interest exists as defined under section 10.29(a) of Circular 230. If the examiner believes that a conflict exists, he/she must secure a conflict of interest waiver from each affected client. Under section 10.29(b) of Circular 230, a practitioner may represent a client despite a conflict of interest if certain circumstances are met.

The proposed IRM 4.82.3.4.2 provides that if an examiner has reason to believe, based on all pertinent facts and circumstances available, that a representative has a conflict of interest, the examiner should promptly raise the issue with the representative and request that the representative act to address the conflict of interest. If the examiner is persuaded that there is not a conflict of interest or that the conflict has been waived, then the examiner can treat the matter as concluded. A representative may also resolve a conflict of interest by, for example, withdrawing from the representation and rescinding the power of attorney.

If the representative has or will obtain the represented person's informed consent to the representation notwithstanding the conflict of interest, the examiner should require written assurance from the representative that the conflict has been resolved through informed consent. The examiner should specifically require a letter or other signed document from the representative stating that after being informed of the conflict of interest, each affected client has waived the conflict and given informed consent to the representation and such consent was confirmed by each client in writing. The examiner ordinarily should not request copies of the actual informed-consent documents that were signed by the affected clients.

When a representative with a conflict of interest does not resolve the conflict, the examiner should, in consultation with the examiner's group manager, contact OPR for guidance. Examiners and group managers can also direct any other questions and concerns to OPR, including whether there is a conflict of interest in a particular case, whether a representative's written assurance of client consent is adequate, and whether a representative is in compliance with section 10.29 of Circular 230.

The specific procedures to be followed are included as an attachment to this memo and will be incorporated into IRM 4.82, *Tax Exempt Bonds Examination Guidelines, of Income*.

If you have questions or need additional information, please contact your group manager.

Attachment

Distribution:

IRS.gov (<http://www.irs.gov>)

ATTACHMENT

4.81.5.6.4.1 (2013)

Identifying and Addressing Conflicts of Interest in Examinations

- (1) Examiners should be alert to all facts and circumstances of a practitioner's representation in order to identify any apparent conflicts of interest and be ready to address any conflict of interest with a representative if a conflict arises under section 10.29(a) of Circular 230.
- (2) As defined in section 10.29(a) of Circular 230, a conflict of interest exists when:
 - The representation of one client will be directly adverse to another client; or
 - There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.
- (3) Under section 10.29(b) of Circular 230, a practitioner may represent a client despite a conflict of interest if:
 - The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;
 - The representation is not prohibited by law; and
 - The affected clients have each waived the conflict and given informed consent to the representation, confirmed in writing by each client.
- (4) Because bond attorneys provide opinions to their clients on whether a bond issuance will qualify for tax-preferred status, examiners should be sensitive to conflict-of-interest issues in examinations that involve the tax-preferred status. Not all situations will present a conflict of interest, however. For example, a conflict of interest does not necessarily arise because an attorney representing the bond issuer in the examination provided the opinion underlying the issuance of the bond, such as when the focus of the examination is post-opinion compliance. All facts and circumstances must be considered in each situation involving a potential conflict of interest.
- (5) If an examiner has reason to believe, based on all pertinent facts and circumstances available, that a representative has a conflict of interest as defined above, the examiner should promptly raise the issue with the representative and request that the representative act to address the conflict of interest. If the examiner is persuaded, based on the representative's response to the examiner's concern over a conflict of interest, that there is not a conflict of interest or that the conflict has been waived as discussed below, the examiner can treat the matter as

concluded. A representative may also resolve a conflict of interest by, for example, withdrawing from the representation and rescinding the power of attorney.

- (6) If the representative responds that he or she has obtained or will obtain the represented person's informed consent to the representation notwithstanding the conflict of interest, the examiner should require written assurance from the representative that the conflict has been resolved through informed consent. The examiner should specifically require a letter or other signed document from the representative stating that after being informed of the conflict of interest, each affected client has waived the conflict and given informed consent to the representation and such consent was confirmed by each client in writing.
- (7) The examiner should include in the case file the written assurance received from the representative that resolves the conflict of interest.
- (8) The examiner ordinarily should not request copies of the actual informed-consent documents that the affected clients have signed or that otherwise function as the clients' written confirmation described in section 10.29(b) of Circular 230.
- (9) The Office of Professional Responsibility (OPR) is the office with exclusive authority to enforce the rules governing practice before the IRS and for pursuing sanctions against a practitioner for violations of Circular 230. When a representative with a conflict of interest does not resolve the conflict, the examiner should, in consultation with the examiner's group manager, contact OPR for guidance. Examiners and group managers can also direct any questions and concerns to OPR, including whether there is a conflict of interest in a particular case, whether a representative's written assurance of client consent is adequate, and whether a representative is in compliance with section 10.29 of Circular 230.